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Solid Waste

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# **Financial Assurance for Closure and Post-Closure Care:**

**Requirements for Owners and Operators  
of Hazardous Waste Treatment, Storage  
and Disposal Facilities**

**A Guidance Manual**

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Administrator, the owner or operator, and the financial institution or corporate guarantor may differ depending on the mechanism being used.

Of course, the owner or operator may request cancellation or termination of a mechanism when alternate assurance has been substituted or when released from the financial requirements. See Section G below.

#### 4. Changing Mechanisms Voluntarily

Owners or operators may voluntarily change the mechanism being used to provide assurance of financial responsibility with prior written approval from the Regional Administrator. If the mechanism has been providing assurance for facilities in more than one Region, the prior written approval of all the affected Regional Administrators is needed.

To receive approval, the new mechanism must comply with EPA's regulations for eligibility. The new mechanism, if approved, must become effective before or at the time that the previous mechanism expires. The Regional Administrator must ensure continuity of coverage, but should strive for the minimum necessary amount of overlap to reduce the cost to the owner or operator. For example, if an owner or operator changes from a trust fund to another financial assurance mechanism, the Regional Administrator should not direct the trustee to release funds from the trust until the new mechanism is effective.

Changing to a trust fund poses special problems. When an owner or operator cancels other assurance to change to a trust fund, the amount of money deposited into the trust fund must be equal to the amount that would have had to be in the trust fund if the trust had been the original financial assurance mechanism and payments to the trust had been made as specified in the regulations. This is discussed in more detail in Chapter III.

#### F. DRAWING ON FUNDS

The conditions under which the owner or operator or the Regional Administrator may draw on a financial assurance mechanism will vary with each mechanism. These conditions are described in Chapters III through VII. Regional Administrators may follow a common procedure, however, when authorizing reimbursement of closure or post-closure expenses in certain situations, including the following:

- the owner or operator uses the trust fund mechanism to satisfy financial requirements
- the surety has placed funds in a standby trust
- the Regional Administrator has directed the deposit of funds through a letter of credit into a standby trust

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- the owner or operator uses the insurance mechanism to satisfy financial requirements
- the corporate guarantor has placed funds in a trust

In these cases, reimbursement of expenses for closure or post-closure care will be subject to the regulations governing trust funds (See Section C.5 of Chapter III) and insurance (see Section C.5 of Chapter VI). The basic requirements include:

- (1) review of itemized bills;
- (2) determination within 60 days whether the expenditures are consistent with closure or post-closure plans, or are otherwise justifiable;
- (3) approval of requests for reimbursement and direction of payment within 60 days unless there is reason to believe that the cost of closure will be significantly greater than available funds; in that case, complete reimbursement should be withheld until certification of proper closure is completed;
- (4) approval of requests for reimbursement of post-closure expenditures, if determined to be justifiable.

When assessing itemized bills submitted by owners or operators, the Regional Administrator will need to decide if any extra expenditures, such as the costs of responding a contingency not accounted for by the plan (bad weather, liner failure, etc.) should be reimbursed by the trust or paid by the owner or operator. Separate payment required of a financially troubled owner or operator may cause it to go into bankruptcy. In this case, EPA might be left responsible for completion of closure or post-closure care of the facility. On the other hand, if the Regional Administrator agrees to reimbursement, there is the possibility that the trust fund will run out of funds before the completion of these activities. This dilemma will have to be solved by the Regional Administrator on a case-by-case basis, in consultation with Headquarters. The owner or operator, of course, remains responsible for all closure and/or post-closure costs even if the financial assurance monies are exhausted.

#### G. RELEASE FROM RCRA FINANCIAL REQUIREMENTS

An owner or operator of a hazardous waste facility is released by the Regional Administrator (1) from the closure financial assurance requirements when it satisfactorily certifies to EPA that closure has been completed in accordance with the closure plan and (2) from the post-closure financial assurance requirements when the post-closure care requirements have been completed in accordance with the post-closure plan. The certification of

closure must be provided by the owner or operator and by an independent registered professional engineer.

In the case of financial assurance for closure, the Regional Administrator will determine whether closure is satisfactory, and notify the owner or operator within 60 days of receiving the certifications. For release from post-closure assurance requirements, the Regional Administrator will approve release at the end of the post-closure period specified in the post-closure plan, upon request of the owner or operator, if post-closure care has been satisfactorily provided in conformity with the plan.

Additionally, an owner or operator may be released from the federal RCRA requirements if (1) the administration of the hazardous waste program is taken over by an authorized state government or (2) ownership or operation of the facility has been transferred, but only in accordance with the specific conditions of such transfers. There should be no lapse in coverage allowed in such circumstances.

#### H. DIFFERENCES BETWEEN REQUIREMENTS FOR INTERIM STATUS AND PERMITTED FACILITIES

This manual contains guidance for both interim status and permitted facilities. Interim status facilities are existing facilities who have submitted notifications and Part A's and are awaiting final disposition of permit applications. A permitted facility is one which has demonstrated compliance with RCRA standards and has received a permit.

The guidance in this manual primarily addresses the financial responsibility requirements for interim status facilities. The additional requirements for permitted facilities are included in the chapters on the mechanisms. It is useful to remember that there are only four differences between interim status and permitted facility financial assurance requirements:

- (1) While financial assurance mechanisms for interim status facilities must generally be in force by the effective date of the regulations, new permitted facilities must provide assurance before the first receipt of hazardous waste at the facility.
- (2) The "pay-in" period for trust funds is defined differently for permitted and interim status facilities. The pay-in period is 20 years (interim status) or the life of the initial RCRA permit (permitted facilities) or the remaining life of the facility (both interim status and permitted facilities), whichever is shorter. (See Chapter III)

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ATTACHMENT II-2

SUMMARY OF REGIONAL OFFICE RESPONSIBILITIES\*

- (1) Check the qualifications of the financial institution, etc.
- (2) Verify that the financial assurance mechanism:
  - (a) Is correctly worded;
  - (b) Is in the proper amount;
  - (c) Is complete;
  - (d) Is signed as required; and
  - (e) Is in effect and submitted to the Regional Office on time.
- (3) Make sure that the amount of financial assurance is increased when necessary during the operating life of the facility due to:
  - (a) Annual adjustments for inflation, and
  - (b) Changes in plans and increases in cost estimates
- (4) Allow decreases in the amount of financial assurance only when cost estimates decrease and the amount of assurance will be adequate.
- (5) Verify that new assurance is obtained:
  - (a) When the financial institution enters bankruptcy or ceases operations;
  - (b) When the financial institution or parent guarantor ceases to qualify; or
  - (c) When the owner or operator requests termination of assurance because a new mechanism is being used or ownership or operating responsibility is being transferred.
- (6) Approve requests for a change in mechanisms when no lapse in coverage will result.
- (7) When the financial institution or parent guarantor sends notice of cancellation, ensure that alternate assurance is provided or the financial mechanism is used to fund closure and/or post-closure care.

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\* NOTE: Responsibilities and rights may vary with the specific financial assurance mechanism used. For details, consult Chapters III through VIII of this manual.



ATTACHMENT II-2 (continued)

SUMMARY OF REGIONAL OFFICE RESPONSIBILITIES\*

- (8) Approve requests for reimbursement for closure and/or post-closure expenses only when itemized bills are submitted and the expenses are in accordance with the plan or otherwise justified. Instruct the insurer or trustee in writing to make reimbursement in the specified amounts. If closure costs will significantly exceed the value of a trust fund or remaining insurance, withhold a portion of reimbursement until completion of closure.
- (9) Permit release from financial assurance requirements only when closure and/or post-closure care is properly completed.
- (10) Approve requests to terminate financial assurance:
  - (a) When alternate assurance is substituted; or
  - (b) When the owner or operator is released from financial assurance requirements.
- (11) Record relevant information in HWDMS and monitor deadlines for submissions

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